Supreme Court, U.S.
FILED
MAY 29 1998
OFFICE OF THE CLERK

No. 97-1618

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNIVERSAL LIFE CHURCH, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record

LORETTA C. ARGRETT
Assistant Attorney General

GARY D. GRAY
KENNETH W. ROSENBERG
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether the revocation of petitioner's tax-exempt status by the Commissioner of Internal Revenue was within the exception to the automatic stay in bankruptcy for "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power" (11 U.S.C. 362(b)(4)).

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	4
Conclusion	9

TABLE OF AUTHORITIES

Cases:

Clark v. *United States (Heritage Village Church and Mississionary Fellowship, Inc.)*, 851 F.2d 104 (1988)	6, 7
Layne & Bowler Corp. v. *Western Well Works, Inc.*, 261 U.S. 387 (1923)	7
NLRB v. *Edward Cooper Painting, Inc.*, 804 F.2d 934 (6th Cir. 1986)	8
United States v. *Whiting Pools, Inc.*, 462 U.S. 198 (1983)	8
Universal Life Church, Inc. v. *United States*, 372 F. Supp. 770 (E.D. Cal. 1974)	4
Universal Life Church, Inc. v. *United States*, 13 Cl. Ct. 567 (1987), aff'd, 862 F. 321 (Fed. Cir. 1988) (Table)	4
Word v. *Commerce Oil Co. (In re Commerce Oil Co.)*, 847 F.2d 291 (6th Cir. 1988)	7
Yellow Cab Coop. Ass'n v. *Metro Taxi, Inc. (In re Yellow Cab Coop. Ass'n)*, 132 F.2d 591 (10th Cir. 1997)	8

Statutes:

Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, Tit. I, § 116, 108 Stat. 4119	4
Bankruptcy Code, 11 U.S.C. 101 *et seq.*:	
Ch. 3:	
11 U.S.C. 362(a)	2, 3
11 U.S.C. 362(a)(1)	5

Statutes—Continued: Page

11 U.S.C. 362(b) 5
11 U.S.C. 362(b)(4) 2, 3, 5, 6, 7, 9
11 U.S.C. 362(b)(9) 4, 5
11 U.S.C. 362(h) 2
Ch. 5:
11 U.S.C. 505 2
Ch. 11 2
26 U.S.C. 6012 2

Miscellaneous:

R. Stern, E. Greessman, S. Shapiro & K. Geller, *Supreme Court Practice* (7th ed. 1993) 7

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1618

UNIVERSAL LIFE CHURCH, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A19) is reported at 128 F.3d 1294. The opinion of the district court (Pet. App. A37-A63) is reported at 191 B.R. 433. The opinion of the bankruptcy court (Pet. App. B64-B66) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 6, 1997. The petition for rehearing was denied on December 30, 1997. The petition for a writ of certiorari was filed on March 30, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On November 30, 1989, petitioner filed a voluntary petition in bankruptcy under Chapter 11 of the Bankruptcy Code. Petitioner thereafter commenced an adversary proceeding under 11 U.S.C. 505 to determine its federal and state tax liabilities for various taxable periods. Petitioner maintained that it was exempt from federal income taxes for the fiscal years ending April 30, 1978, through April 30, 1990 (Pet. App. A7).

On January 8, 1991, the Commissioner of Internal Revenue formally revoked petitioner's tax-exempt status for the fiscal years ending April 30, 1982, through April 30, 1985. The Commissioner informed petitioner at that time that, pursuant to 26 U.S.C. 6012, petitioner was required to file federal income tax returns for those years (Pet. App. A7).

2. On July 20, 1993, petitioner filed a motion in bankruptcy court seeking a declaration that the Commissioner's revocation of its tax-exempt status violated the automatic stay of 11 U.S.C. 362(a). In addition, petitioner sought damages for the asserted violation of the stay pursuant to 11 U.S.C. 362(h) (Pet. App. A7-A8).

The bankruptcy court denied the motion. The court concluded that, even if the revocation of petitioner's tax-exempt status were within the scope of the automatic stay, it is within the exception from the stay for "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power" (11 U.S.C. 362(b)(4)) (Pet. App. B65-B66).[1] The

---

[1] In a parallel proceeding, the bankruptcy court ordered petitioner to file federal tax returns (Pet. App. A8). The

district court affirmed the order of the bankruptcy court (*id.* at A37-A63).

3. The court of appeals affirmed (Pet. App. A1-A19). The automatic stay of 11 U.S.C. 362(a) is designed specifically to stay certain actions aimed at enforcing or collecting claims against the debtor. The court of appeals assumed, without deciding, that the act of revoking a debtor's tax-exempt status is within the scope of the automatic stay (Pet. App. A8). The court concluded, however, that the revocation of tax-exempt status was nonetheless exempted from the automatic stay under 11 U.S.C. 362(b)(4) as an "act to enforce" the government's "police or regulatory powers" (Pet. App. A8).

The court concluded that the phrase "police or regulatory power" refers to the enforcement of laws affecting health, welfare, morals and safety, but not to regulatory laws that directly conflict with the control of the res or property by the bankruptcy court (Pet. App. A9). The court held that the revocation of petitioner's tax-exempt status "was an exercise of the IRS's police or regulatory power because revocation promotes public welfare by assuring the public and potential donors that contributions will be used for legitimate charitable purposes" (*id.* at A10). The court concluded that the "determination that an organization may not meet the standards for tax exempt status in itself serves a general public welfare purpose beyond any pecuniary application in a particular case" (*id.* at A11). In this context, revocation of tax-exempt status is a form of "fraud detection" that justifies invocation of the police-power exception even if

---

appeal filed by petitioner from that order is currently pending in the district court (*id.* at A18-A19).

a governmental pecuniary interest also exists (*ibid.*). Revocation of tax-exempt status directly serves this significant law enforcement function (*id.* at A12).

The court of appeals also rejected petitioner's argument that the government is collaterally estopped from revoking petitioner's tax-exempt status. The court pointed out that, although a federal district court had previously determined that petitioner was entitled to tax exempt status for the fiscal year ending April 30, 1969 (*Universal Life Church, Inc.* v. *United States*, 372 F. Supp. 770 (E.D. Cal. 1974)), that decision is not controlling for the different period (1982-1985) addressed by the Commissioner's more recent determination. The bases for denying exempt status were different and the facts had changed significantly since the prior judgment (Pet. App. A17). Indeed, a subsequent decision had upheld the Commissioner's revocation of petitioner's tax-exempt status for several intervening fiscal years. See *Universal Life Church, Inc.* v. *United States*, 13 Cl. Ct. 567, 580 (1987), aff'd, 862 F.2d 321 (Fed. Cir. 1988) (Table).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The question presented in this case lacks any continuing importance. In 1994, Congress amended Section 362(b)(9) to except from the automatic stay all tax audits, demands for tax returns and assessments of tax liability. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, Tit. I, § 116, 108 Stat. 4119. If, as petitioner argues, the revocation of a debtor's tax-exempt

status is an act within the scope of the automatic stay because it constitutes part of the "administrative process leading to assessment" (Pet. 12), the act of revocation would fall directly within the scope of the new exception. As petitioner acknowledges, Section 362(b)(9) "now allows the IRS to take all actions up to the last discrete act of assessment" (Pet. 24 n.11). Whether revocation of a debtor's tax-exempt status is exempted from the automatic stay not only under Section 362(b)(9) but also because it is within the police or regulatory power exception from the stay under Section 362(b)(4) therefore has only academic significance for cases arising after 1994.

2. When a petition for relief is filed in bankruptcy court, Section 362(a)(1) of the Bankruptcy Code generally stays the commencement or continuation of a judicial or administrative proceeding (i) against the debtor that was or could have been commenced before the commencement of the bankruptcy case or (ii) to recover a prebankruptcy claim against the debtor. 11 U.S.C. 362(a)(1). Several exceptions to that automatic stay are provided in Section 362(b). One of the exceptions specifies that the automatic stay does not apply to "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." 11 U.S.C. 362(b)(4).

In the present case, the court of appeals did not decide whether the automatic stay would, on its own terms, apply to the act of revoking a debtor's tax-exempt status. Instead, the court of appeals held that such a revocation would in any event be excepted from the automatic stay under the "police or regulatory power" exception of Section 362(b)(4).

In determining whether a governmental act comes within the ambit of Section 362(b)(4), courts have focussed on whether the action represents a direct application of police or regulatory powers or is instead aimed at obtaining a pecuniary advantage over other creditors of the debtor's estate. The courts below correctly characterized the government's function in revoking an invalid tax exemption "as a type of fraud detection, assuring potential donors that the organization will not use their contributions for personal profit, but for charitable purposes encouraged by law" (Pet. App. A11). For this reason, as the courts below held, the revocation of petitioner's tax-exempt status falls squarely within the text and purpose of Section 362(b)(4).[2]

3. Petitioner does not allege that a conflict exists among the circuits on the question whether revocation of a debtor's tax-exempt status falls within the "police or regulatory power" exception of Section 362(b)(4). Indeed, it appears that no other court of appeals has had an occasion to address this particular question.[3]

---

[2] Although the issue is not included within the scope of the question presented in the petition, petitioner contends that the government was collaterally estopped by a 1974 ruling on petitioner's tax-exempt status for 1969 from revoking its tax-exempt status for subsequent years (Pet. 25-28). That contention was correctly rejected by the court of appeals, for the reasons explained in its opinion (Pet. App. A17-A18) and at page 4, *supra*. Petitioner's assertions concerning collateral estoppel are, in any event, based upon the facts of this case and do not present an issue warranting review by this Court.

[3] The Fourth Circuit held in *Clark* v. *United States (In re Heritage Village Church and Missionary Fellowship, Inc.)*, 851 F.2d 104 (1988), that revocation of a debtor's tax-exempt status does not violate the automatic stay. That court had no occasion

Petitioner instead seeks to rely (Pet. 13) on the assertion that there is an abstract divergence of the standards announced by the courts of appeals in various cases involving the police or regulatory power exception in different contexts. That is not the type of direct conflict among the circuits that warrants the grant of certiorari by this Court. The Court has long emphasized that "it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases *where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal*" (*Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387, 393 (1923) (emphasis added)). "[T]here must be a real or 'intolerable' conflict on the same matter of law or fact, not merely an inconsistency in dicta or in the general principles utilized." R. Stern, E. Gressman, S. Shapiro & K. Geller, *Supreme Court Practice* § 4.3, at 167 (7th ed. 1993).

Moreover, the formulation of the "police or regulatory power" exception by the court of appeals in this case is not inconsistent with the formulations announced by other courts. In particular, notwithstanding petitioner's assertion to the contrary (Pet. 13), it is not inconsistent with the formulation adopted by the Sixth Circuit in *Word* v. *Commerce Oil Co. (In re Commerce Oil Co.)*, 847 F.2d 291, 295 (1988). In that

---

to (and did not) consider whether such a revocation would fall within the "police or regulatory power" exception of Section 362(b)(4) of the Bankruptcy Code; instead, it held that the act of revocation did not come even within the scope of the automatic stay provisions of Section 362(a). 851 F.2d at 105.

case, the Sixth Circuit stated that "reviewing courts [are to] focus on whether the governmental proceeding relates primarily to the protection of the government's pecuniary interest in the debtor's property, and not to matters of public safety." That is not inconsistent with the statement of the court of appeals in the present case that "the court determines whether the government action relates primarily to the protection of the government's pecuniary interest in the debtor's property or to matters of public safety and welfare" (Pet. App. A10). See also *Yellow Cab Coop. Ass'n* v. *Metro Taxi, Inc. (In re Yellow Cab Coop. Ass'n)*, 132 F.3d 591, 597 (10th Cir. 1997); *NLRB* v. *Edward Cooper Painting, Inc.*, 804 F.2d 934, 942 (6th Cir. 1986).

Petitioner errs in contending (Pet. 22) that a conflict exists between the decision of the court of appeals in this case and the decision of this Court in *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198 (1983). Petitioner does not assert that there is a conflict between the actual holdings of these two quite different cases. Instead, petitioner asserts that, in the decision below, the court of appeals effected "a judicially-created exception to the automatic stay" (Pet. 23) whereas, in *Whiting Pools*, this Court declined (in an entirely different context) to do so. Even if petitioner's characterization of *Whiting Pools* were correct, which it is not,[4] that decision does not estab-

---

[4] The issue in *Whiting Pools* was whether the Internal Revenue Service is required to turn over to the bankruptcy estate personal property seized from the debtor prior to bankruptcy that had not yet been sold. The Court's resolution of that issue did not turn on the interpretation of exceptions to the automatic stay provision; instead, it turned on whether the

lish even a theoretical conflict with this case. The government neither sought nor received a special, "judicially-created exception to the automatic stay" in this case. The exception to the stay involved in this case was provided expressly by Congress, in Section 326(b)(4) of the Bankruptcy Code. Nothing in *Whiting Pools*—or even in petitioner's characterization of that case—is inconsistent with the decision of the courts below.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

LORETTA C. ARGRETT
Assistant Attorney General

GARY D. GRAY
KENNETH W. ROSENBERG
Attorneys

JUNE 1998

---

debtor's estate retained an interest in the seized property. 462 U.S. at 209-210.